

1 the stuff from John, I think we -- I forwarded
2 that information to her, so.

3 Q Can you describe your conversations with
4 Ms. Karen Dunn Kelley? 401/403

5 A I'm not sure there was a conversation,
6 so.

7 Q So how do you know --

8 A So --

9 Q -- Ms. Karen Dunn Kelley?

10 A Again, I don't recall this conversation
11 directly.

12 Q Do you recall that Ms. Dunn Kelley agreed
13 with the recommendation of Alternative C?

14 A I don't recall her saying that.

15 Q Do you know why you put this in --

16 A I didn't put this in --

17 Q -- by you -- I'm sorry. Can I -- let me
18 try again.

19 Do you recall telling John that
20 Karen Dunn Kelley agrees with the recommendation
21 of Alternative C?

22 A I don't recall telling John this. This

1 is -- so -- just so you know, this is, you know,
2 January 4th. There was professional meetings
3 about to happen. I was probably involved in
4 several different things at the time. I don't
5 recall this conversation. 401/403

6 Q Do you remember, separate from the email,
7 what Ms. Dunn Kelley's view was with respect to
8 which alternative was preferable, A, B, C, around
9 the beginning of January 2018?

10 A So I don't recall a view so much as I
11 think she was supportive of the process that the
12 Census Bureau was following, and that, you know,
13 she was looking for -- to see what -- where that
14 came out. So I don't -- I don't recall her 802
15 stating a preference on one alternative or the
16 other.

17 Q Do you recall --

18 A Perhaps she did. I'm just saying I don't
19 recall.

20 Q Do you recall Ms. Dunn Kelley disagreeing
21 with any of the recommendations of the
22 Census Bureau around this time with respect to

1 this question?

2 A Yeah. I don't recall her agreeing or
3 disagreeing. 401/403/802

4 Q Now, this email was sent back in early
5 January of 2018. And you were cc'd on this email,
6 correct?

7 A Yes.

8 Q Do you recall writing back to Mr. -- to
9 Dr. Abowd saying, no, this is not what I discussed
10 with the Under Secretary?

11 A No. I don't -- I don't recall doing
12 that.

13 Q Did you do that?

14 A I said, no, I do not recall doing that.

15 Q And did you write back to Dr. Abowd and
16 say Karen Dunn Kelley does not agree with the
17 recommendation of Alternative C? 401/403

18 A I don't think I did that, no.

19 Q Okay. So is it fair to say that you
20 received this email back on January 4, 2018, yes?

21 A Yes.

22 Q And that you agreed with this email when

1 you received it?

2 MS. BAILEY: Objection. Form.

3 THE WITNESS: So I get lots of emails
4 that I pay some attention to or less attention to.
5 So as you might imagine, I get cc'd on lots of
6 email. So -- so saying that I agreed with it,
7 is -- is saying that I read it and fully
8 internalized it when I was busy with other
9 activities, as well. So I don't recall doing
10 that.

401/403

11 BY MS. GOLDSTEIN:

12 Q If you received an
13 email -- Ms. Dunn Kelley is your boss; is that
14 correct?

15 A That's correct.

16 Q If you received an email that
17 mischaracterized a conversation that you had with
18 your boss, would you have corrected that
19 mischaracterization?

20 A If I'd read the email, yeah.

21 Q Are you in the habit of not reading
22 emails that you receive?

1 A There are many emails that I do not read.

2 Q Have you read this email before?

3 A So I do not recall getting this email on
4 January 4th -- or -- yeah, January 4th.

5 Q Is it fair --

401/403

6 A Or that -- or in more particular, the
7 conversation that I would -- I supposedly had with
8 the Secretary -- Under Secretary.

9 Q Is it fair to say that if you had
10 received this email, read it, and disagreed with
11 the characterization, you would have said
12 something about it?

13 MS. BAILEY: Objection. Asked and
14 answered.

15 THE WITNESS: Yes. Probably.

16 BY MS. GOLDSTEIN:

17 Q Do you know what memo was attached to
18 this email?

19 A No.

20 Q I'm going to show you what's been marked
21 as Exhibit 6 to the Abowd deposition -- previously
22 marked as Exhibit 6 to the Abowd deposition. It

1 is a January 19, 2018 memorandum entitled
2 technical review of the Department of Justice
3 request to add the citizenship question to the
4 2020 census.

5 Do you recognize this document?

6 A I do.

7 Q What is this?

8 A This is the memo that we prepared for the
9 Secretary.

10 Q We previously looked at a white paper
11 from the Census Bureau, correct?

12 A Uh-huh. Yes.

13 Q Why was there -- was this nec- -- this
14 memo necessary, given the prior white paper?

15 A I think it was just a more formal
16 representation.

17 Q Did you have any input into this
18 document?

19 A Not on a technical level, no.

20 Q Who do you rely on for the technical
21 component?

22 A John and his team.

1 Q And when we're talking about the
2 technical component, we're talking about the
3 science of --

4 A Right. Yes.

5 Q So you rely on John Abowd and his team
6 for the science with respect to the citizenship
7 question?

8 A Yes. In this case, yeah. I don't have
9 time to do science anymore.

10 Q And did you review the findings of this
11 memo?

401/403

12 A Yes.

13 Q And did you agree with the findings of
14 this memo?

15 A I did.

16 Q And when this memo says -- I'm looking
17 here at the last paragraph on Page 1277.

18 A Correct.

19 Q "Alternative C best meets DOJ's stated
20 uses, is comparatively far less costly than
21 Alternative B, does not increase response burden,
22 and does not harm the quality of the census

1 count."

2 You agree with that statement?

401/403

3 A I did.

4 Q And when you look at the last sentence of
5 that paragraph, "However, Alternative B is very
6 costly, harms the quality of the census count, and
7 would use substantially less accurate citizenship
8 status data that are available from administrative
9 sources," you agree with that statement, correct?

10 A Yes.

11 Q Who -- do you know if Karen Dunn Kelley
12 reviewed this memo?

13 A She did.

14 Q How do you know that?

15 A Because we gave it to her.

16 Q Did you speak with her in person about
17 this memo?

18 A Yeah. We -- we met about this memo.

19 Q When?

20 A I'm not sure exactly the date, but I
21 believe shortly after we sent it down. It was
22 either late January or early February.

1 A I don't recall. Probably not much more
2 than an hour.

3 Q What happened at this meeting?

4 A We had a discussion of the -- of the
5 recommendations.

6 Q Who is we?

7 A The people I just mentioned at the
8 meeting.

9 Q Who led the meeting?

10 A I think the meeting was led -- so the
11 Secretary typically reads these things. So to say
12 that these meeting are led, it's kind of you come
13 in the room and you are talking about it. He'll
14 ask questions, so.

15 Q And did the Secretary ask questions?

16 A He did.

PL obj: 802

17 Q What did the Secretary ask?

18 A He was -- he quickly honed in on that
19 none of the three options were perfect.

20 Q What do you mean?

21 A So -- so each one has respective
22 strengths and weaknesses. In particular, when we

1 started focusing between Options B and Options C,
2 you know, we don't have administrative records for
3 every person in the country, so we would miss
4 folks that we would have to impute citizenship
5 status for. Obviously, Option B had cost
6 ramifications and also would miss some people.
7 And so that's when the discussion sort of turned
8 to a sort of hybrid model.

9 Q Tell me what else was discussed at this
10 meeting.

11 A That was essentially what was discussed.

12 Q What was the discussion of this hybrid
13 model?

14 A So could we use both sources of data to
15 produce sort of the block-level estimates
16 that -- that DOJ needed?

17 Q And who asked for the hybrid model?

18 A So the Secretary asked for the hybrid
19 model.

401/403/802

20 Q What else did the Secretary say at this
21 meeting?

22 A That's about it.

1 Q Can you describe a bit more specifically
2 what the Census Bureau was asked to do coming out
3 of that meeting? 401/403/802

4 A To explore a fourth option, a hybrid
5 option that included a question on the short-form
6 census and administrative records.

7 Q Any other details that the Census Bureau
8 was given?

9 A No.

10 Q Any timeline the Census Bureau was given?

11 A So, obviously, the timeline was very
12 compressed, so we still needed to get the
13 questions to Congress by March, so.

14 Q Were you given any more specifics about
15 your time frame?

16 A No.

17 Q Do you recall anything that --

18 A As soon as possible, I think, is the time
19 frame that we're dealing with here.

20 Q Do you recall anything that Mr. Comstock
21 said in that meeting?

22 A So he asked similar questions to the

1 Q What is this?

2 A I think it was a summary of the white
3 paper findings.

4 Q And this is a document that's
5 Bates-stamped 8614 to 8616. It is a memorandum
6 addressed to you entitled summary of
7 costs -- quality/cost of alternatives for meeting
8 Department of Justice's request for citizenship
9 data.

401/403

10 A Yep.

11 Q If you turn to the last page of this
12 document, it states that "Alternative C even
13 better meets DOJ's stated uses."

14 Do you agree with that?

15 A I do.

16 Q "Is comparatively far less costly than
17 Alternative B."

18 Do you agree with that?

19 A Yes.

20 Q "And does not harm the quality of the
21 census count."

22 Do you agree?

1 A Yes.

2 Q "For these reasons, we recommend

3 Alternative C for meeting

401/403

4 the Department of Justice data request."

5 Who is we?

6 A The technical team.

7 Q And you agree with that, as well?

8 A Yes.

9 Q I'll take that back.

10 Other than the meeting you just described
11 regarding the citizenship question with
12 Secretary Ross, did you have any other questions
13 for Secretary Ross about the citizenship question?

14 A Did I have any extra questions for the
15 Secretary?

16 Q Any other discussions with Secretary Ross
17 about the citizenship question?

18 A Nothing that I recall as being important,
19 that's for sure. So probably not, no.

20 Q Do you recall anything that was
21 unimportant?

22 A No.

1 scroll towards the back of it, it begins
2 on -- sorry -- the first page of the document you
3 have is what number, Dr. Jarmin?

4 A 1286. The first page?

5 Q Oh. I'm sorry. Can I have that back?

6 MS. GOLDSTEIN: Actually, can I have one
7 of those, please? Let's do it this way, can you
8 just mark that?

9 (Plaintiffs' Exhibit 16, Email, was
10 marked.)

11 BY MS. GOLDSTEIN:

12 Q I'm showing you what's been marked as 16,
13 Exhibit 16 to your deposition, and it begins 9812.
14 It goes to 9833.

15 Can you please turn to 9822? Do you
16 recognize this document?

17 A Yeah. This is responses to Commerce's
18 questions about the memo to the Secretary.

19 Q How did this document come about?

20 A We received these questions, and these
21 are the responses to them.

401/403

22 Q Who did you receive these questions from?

1 A I'm not sure. I think it might have been
2 Earl Comstock.

3 Q Anyone else?

401/403

4 A These things are often cc'd across a
5 number of people, so.

6 Q And when did you receive these questions?
7 Do you recall?

8 A I believe it was shortly after meeting
9 with the Secretary, but I'm not sure.

10 Q Who wrote the answers to these questions?

11 A Folks on the technical team, for the most
12 part.

13 Q From the Census Bureau?

14 A Yeah.

15 Q And when you say for the most part, what
16 do you mean?

17 A Well, that's my understanding of who
18 answered these questions.

19 Q It was all folks from the technical
20 team --

21 A Yeah.

22 Q -- correct? Yes?

1 A Yes.

2 Q And did you have a role in developing the
3 answers to these questions?

4 A Not a -- I mean, I was cc'd on things,
5 but I was not -- I did not play a role in
6 addressing the questions directly.

7 Q Did you review the answers that the
8 Census Bureau came up with? 401/403

9 A Yeah. I probably looked at some of this.
10 Probably -- not all of this, because this came in
11 drips and drabs, so.

12 Q How was this document transmitted to
13 Commerce?

14 A I believe it was sent probably by Abowd
15 or someone like that, or maybe by -- I mean, it
16 might have been sent by me forwarding on what the
17 team had done.

18 Q Do you --

19 A Someone would have forwarded down to
20 them.

21 Q Is it fair to say you I agreed with what
22 the technical team wrote in this document?

1 you.

2 Q Did the Census Bureau receive any
3 feedback on these questions from Commerce?

4 A Other than the like, you know,
5 clarifications or anything like that, no. No.

6 Q So it's my understanding that Dr. Abowd
7 testified this was the final Census Bureau version
8 of these questions and answers. Can you tell if
9 that's accurate?

10 A As far as I -- I've never seen another
11 set of them go out, so.

401/403

12 Q What do you mean?

13 A I mean, I never saw anything after this,
14 so.

15 Q So, to your knowledge, this is --

16 A This is the final, yeah.

17 Q And if you go to 9832, Question 31 --

18 A Uh-huh.

19 Q -- it states, "The Census Bureau follows
20 a well-established process when adding or changing
21 content on the census for ACS to ensure the data
22 fulfill legal and regulatory requirements

1 established by Congress."

2 Do you agree with that?

3 A Yep.

4 Q "Adding a question or making a change to
5 the decennial census or the ACS involves extensive
6 testing, review and evaluation."

7 Do you agree?

8 A Uh-huh.

9 Q I'm sorry. I need a yes or --

10 A Yes.

11 Q "This process ensures the changes
12 necessary and will produce quality, useful
13 information for the nation."

14 Do you agree?

15 A We've already gone over that, yes.

16 Q And when you look down at the steps here
17 that are listed in Question 31, do you agree that
18 each of these steps represents part of the
19 well-established process when adding or changing
20 content on the census?

21 A Yes.

22 Q "Including that final proposed questions

401/403

1 result from extensive cognitive and field testing
2 to ensure their result and proper data"?

3 A Yes.

4 Q "With an integrity that meets the
5 Census Bureau's highest standards"? 401/403

6 A Correct.

7 Q What's the difference between cognitive
8 and field testing?

9 A So cognitive is making sure people
10 understand the question. Field testing is making
11 sure that we can actually implement the question
12 in the field.

13 Q What does that mean?

14 A So does it work in a -- in -- on a
15 survey.

16 Q How -- how do you tell if it works on a
17 survey?

18 A Well, whether we get good response or
19 not.

20 Q How do you test that?

21 A So by doing a test survey or in another
22 survey.

PL obj (140:1 to 142:22), FRE 701,
702, 703, 704, 705

Page 140

1 Q Can you help me understand the difference
2 between cognitive and field testing?

3 MS. BAILEY: Objection. Asked and
4 answered.

5 THE WITNESS: So cognitive is when I
6 understand whether you can read and understand the
7 question and what is being asked of you, so.

8 BY MS. GOLDSTEIN:

9 Q And field testing is about how a question
10 performs on a survey instrument?

11 A Right. People may understand it and
12 still choose not to answer it.

13 Q And that's --

14 A Or answer it incompletely or something,
15 right.

16 Q And is that the sort of thing you find
17 out from field testing?

18 A Yes.

19 Q Was the citizenship question field
20 tested?

21 A Of course. It's been in the ACS for
22 years. So it's been answered by 40 to 50 million

1 households.

2 Q So it was field tested in the context of
3 the ACS, yes?

4 A Yes.

5 Q Was the citizenship question ever field
6 tested in the context of the short form?

7 MS. BAILEY: Objection. Asked and
8 answered.

9 THE WITNESS: We never asked it on the
10 short form before. The only way to do that would
11 be to ask it on the short form.

12 BY MS. GOLDSTEIN:

13 Q Couldn't you have put it on the
14 end-to-end test?

15 A The end-to-end test goes to fewer people
16 than the ACS does. So I don't know how that would
17 achieve the objective.

18 Q When it says here that final proposed
19 questions result from extensive cognitive and
20 field testing, typically, final proposed questions
21 are fielded before they're put on a survey,
22 correct?

1 A Correct.

2 Q So, for example --

3 A This question has been field tested --

4 Q On --

5 A -- on the ACS, three and a half million
6 households a year. Providence would have asked it
7 of a couple hundred households.

8 Q Uh-huh.

9 A So it's been field tested.

10 Q In the context of the ACS, correct?

11 A Correct. There is no field test for the
12 decennial. There's either the decennial or
13 there's not.

14 Q The end-to-end test tests --

15 A Tests systems, not questions.

16 Q What does that mean?

17 A It tests all of our processes and systems
18 to see if they work.

19 Q Take that back -- actually, if you flip
20 to the first page of it. Is this the preliminary
21 analysis of Alternative D?

22 A Uh-huh.

1 Q Combined B and C, can you tell me what
2 this is?

3 A This is a short description of the
4 analysis that the team did of Alternative D.

5 Q And did you review this document?

6 A Yes.

7 Q Do you agree with it?

401/403

8 A I do.

9 Q Who else reviewed this document?

10 A The team, John Abowd.

11 Q Karen Dunn Kelley reviewed it?

12 A Yeah.

13 Q Did Secretary Ross review it?

14 A I would assume so. Again, this was
15 information provided for his review.

16 Q Did you have conversations about this
17 memo with Ms. Dunn Kelley?

18 A Yeah. I don't recall a -- a discussion
19 particularly about this memo, no.

20 Q Do you recall having any conversations
21 with Secretary Ross about this memo?

22 A No.

1 Q Did you have any conversations with
2 anyone else at Census -- at Commerce regarding
3 this memo?

4 A At --

401/403

5 Q At -- did you have any conversations
6 about this memo with anyone else at Commerce --

7 A So, again, I'm not recalling
8 conversations about this memo. I mean, you know,
9 obviously, when we came back with Alternative D,
10 we said what, you know, we gave our, you
11 know -- our assessment of Alternative D, and they
12 took that into consideration. We did not have
13 detailed conversations like we did about the
14 original three alternatives.

15 Q You said you didn't have detailed
16 conversations. Do you remember any conversations
17 with Commerce about your analysis
18 of Alternative D?

19 A I don't recall that.

20 Q If you go to 9816. You say that in
21 sum -- this memo says that, "In sum, Alternative D
22 would result in poorer quality citizenship data

1 than in Alternative C."

2 Do you agree?

401/403

3 A Yes.

4 Q "It would still have all the negative
5 cost and quality implications of Alternative B
6 outlined in the draft January 19th memo to the
7 Department of Commerce."

8 Do you agree?

9 A Yes.

10 Q So you said a moment ago that the
11 Secretary took this memo into consideration?

12 A I believe so.

802

13 MS. BAILEY: Objection. Mischaracterizes
14 prior testimony.

15 BY MS. GOLDSTEIN:

16 Q Why do you say that?

17 A Say what?

18 Q That they took that into consideration.

19 A It was provided for his consideration.

20 Q Okay. But do you have any personal
21 knowledge as to what was done with this memo after
22 Census prepared it?

1 A So Karen -- I think Karen did.

2 Q Anyone else?

3 A I don't think so, no.

4 Q Do you remember exactly what Karen asked
5 you to do?

6 A Can you help identify people that the
7 Secretary should talk to?

8 Q And was there a parallel process for
9 folks in the Census Bureau to talk to stakeholders
10 about the citizenship question?

11 A A parallel process for us to talk to them
12 about what?

13 Q About adding the citizenship question.

14 A So, no. So, I mean, the decision point
15 laid with the Secretary, so Census was not
16 involved in a side deliberative process on that.

17 Q And other than thinking about who would
18 have a broad range of perspectives, were there
19 other considerations in determining who the
20 Secretary should talk to and who the Secretary
21 shouldn't?

22 A So I may I -- I think he, you know,

1 wanted to get a broad set of interpretations, both
2 pro and con.

3 Q Why do you say that?

4 A You know, because most of the feedback in
5 the -- initially, was all in the con. So they
6 were looking for, you know, was there somebody who
7 would speak in favor of the addition of the
8 question?

401/403/802

9 Q How did -- who told you that?

10 A So I think we were looking for -- we were
11 trying to find -- the charge was to get a broad
12 set of perspectives, and that's why we wanted to
13 have people on both sides.

14 Q So you just testified that most of the
15 feedback, initially, was all in the con.

16 A Yeah.

17 Q How did you know that most of the
18 feedback, initially, was all in the con?

19 A Well, you know, it was in the newspaper.
20 And, you know, people that we had dealt with
21 before had sent letters to both Secretary and to
22 me. So that's how we knew.

1 Q Did anyone at Commerce instruct you to
2 find stakeholders who were in favor of the
3 citizenship question?

4 A No. It was not an instruction. I mean,
5 I think we sat around trying, talking about who
6 the Secretary should talk to, and we wanted to
7 find, you know, a full range of opinions.

8 Q And we is you and Mr. Lamas?

9 A And Karen, yeah.

10 Q And Karen.

11 Anyone else?

12 A I don't remember anyone else being there,
13 but there -- you know, there often are others in
14 the room, but that was the primary people.

15 Q And do you remember anyone else in the
16 room?

17 A No.

18 Q And do you remember anything else that
19 Ms. Dunn Kelley said --

20 A No.

21 Q -- concerning this?

22 A No.

1 Q What are these?

2 A This was -- I reached out to a person I
3 know at AEI, Michael Strain, to see if he or
4 anyone else would be willing to -- to talk to the
5 Secretary more from the pro side, as opposed to
6 con side. So, again, trying to get a more rounded
7 set of stakeholders involved here.

8 Q Did anyone instruct you to reach out to
9 AEI?

401/403

10 A No.

11 Q And AEI, for the record, stands for?

12 A American Enterprise Institute.

13 Q Whose idea was it to send solicitations
14 like this out?

15 A So this was -- to sending it to -- I
16 mean, it was the general idea that we would try to
17 find somebody. I knew Michael. I reached out to
18 him.

19 Q Who else did that team reach out to to
20 try to find a pro side?

21 A I don't know. I mean, again, this
22 is -- I think everyone was trying to reach out to

1 A No.

2 Q Are you aware of anyone else on that team
3 that made phone calls seeking stakeholders for the
4 pro side?

5 A I'm not aware.

6 Q And Mr. Strain advised you that no one at
7 AEI was willing to speak favorably about the
8 proposal, correct? 401/403/802

9 A That is correct.

10 Q Did you have any conversations about
11 Mr. Strain with Karen Dunn Kelley?

12 A No. This is -- this is the complete
13 record on that.

14 Q Did you have conversations with anyone
15 else at Commerce about your communications with
16 AEI?

17 A No.

18 Q Did you have communications with anyone
19 else about your communications with AEI on the
20 citizenship question?

21 A No.

22 (Plaintiffs' Exhibit 18, Email, was

1 Q Did she email you the decision memo?

2 A I don't recall.

3 Q Do you know if you saw the decision memo
4 before it was finalized?

5 A I think we had a quick turnaround on
6 something about Option D.

7 Q Did you ask --

8 A But that was -- that was, you
9 know -- everything was hurried at that stage.

10 Q We'll talk about that in just a moment.

11 Did you ask Ms. Dunn Kelley why the
12 Census Bureau's recommendations were overruled?

13 A I did not.

401/403/802

14 Q Did she tell you?

15 A She -- well, we were all in the meeting
16 where the Secretary had expressed some interest in
17 the -- in the hybrid solution, and that's what he
18 chose. And so it was, essentially, the Secretary
19 decided to go with the hybrid solution.

20 Q Is it fair to say, though, that census
21 never had -- apart from the memos that were
22 sent --

1 A Right.

2 Q -- that Census never had substantive
3 conversations with anyone at Commerce about
4 Option D? 401/403

5 A No. I mean, I'm not sure what you mean
6 by substantive. Be more specific.

7 Q Other than the memos that were sent from
8 Census to Commerce about Option D, did anyone from
9 Census have any conversations about the
10 Census Bureau's analysis of Option D?

11 A Not that I'm aware of, so.

12 Q And would you have been aware if there
13 were conversations?

14 A I think I would have been aware, yes.

15 Q So let's talk about what you just
16 mentioned with the quick turnaround on Option D.
17 What happened?

18 MS. BAILEY: Objection. Vague.

19 THE WITNESS: So I don't know what you
20 mean by what happened -- what happened.

21 BY MS. GOLDSTEIN:

22 Q Sure.

1 So we were talking about seeing a draft
2 of the decision memo, correct?

3 A Yes.

4 Q When did you first see a draft of the
5 decision memo?

6 A I don't recall exactly when, but, I mean,
7 it was -- we had an opportunity to make sure that
8 it was technically correct.

9 Q Who is we? 401/403

10 A The Census Bureau.

11 Q And what do you mean by technically
12 correct?

13 A That, you know, there wasn't any
14 information about Census Bureau, you know,
15 operations, costs, you know, that sort of stuff
16 that wasn't accurate.

17 Q So what was this opportunity that you had
18 to make sure that the memo was technically
19 correct?

20 MS. BAILEY: Objection. Vague.

21 THE WITNESS: It was that.

22 BY MS. GOLDSTEIN:

1 A Yeah.

2 Q Led by Dr. Abowd?

3 A Yeah.

4 Q Did you discuss any of the changes that
5 were proposed to the memo?

6 A I don't recall any major discussions
7 about that.

8 Q Do you recall what any of the changes
9 were?

10 A I don't.

11 Q Is there anything that would help you
12 remember?

13 A Seeing the two versions, but I -- other
14 than that, I don't recall.

15 Q Other than this process where the
16 Census Bureau checked to make sure that the
17 decision memo was technically correct, did the
18 Census Bureau have any input into that decision
19 memo?

401/403

20 A No.

21 Q How long did the process of the
22 Census Bureau making sure that the decision memo

1 A Yes.

2 Q And looking at this document now, does
3 this help -- are you able to identify any changes
4 that the Census Bureau made to make this document
5 more technically correct?

6 A I can't identify changes. But if I 401/403
7 recall correctly, there were some issues
8 about, you know, various response rates. You
9 know, there were, like, corrections to numbers and
10 stuff like that.

11 Q Do you remember what any of those
12 corrections to numbers were?

13 A I don't.

14 Q Do you remember which direction the
15 correction to numbers went, made corrections
16 higher or lower?

17 A I don't that either.

18 Q Who would be the right person to ask
19 that?

20 A You know, John Abowd might have
21 better --

22 Q Anyone else?

1 A That's where I would start.

2 Q So who wrote this memo?

3 A I don't know.

4 Q Is there anyone who would know?

5 A I imagine the Secretary would know.

6 Q Anyone else?

7 A I don't know. I don't know who wrote
8 this let- -- memo.

9 Q So if you go to Page 3, the second full
10 paragraph references surveys from Nielsen. Do you
11 see that?

401/403

12 A Uh-huh.

13 Q I'm sorry. I need a yes or no.

14 A Yes.

15 Q Did you ever see these surveys from
16 Nielsen that are referenced in this decision memo?

17 A No.

18 Q Did anyone from the Census ever see the
19 surveys that were referenced in this decision
20 memo?

21 A I don't know. But as far as I know,
22 nobody did.

1 Q When did you first hear about these
2 surveys from the Nielsen?

3 A I think in the context -- I mean, you
4 know, Nielsen obviously does surveys --

401/403

5 Q Sure.

6 A -- and we have some interaction with them
7 on other things. So, you know, I think this was
8 the first that I had heard about these surveys in
9 this context, for sure.

10 Q So this was the first time reviewing --

11 A Right.

12 Q -- this March decision memo when you
13 heard about Nielsen adding questions on the ACS --

14 A Uh-huh.

15 Q -- on sensitive topics?

16 A Uh-huh.

17 Q Sorry. I need a yes or no.

18 A Yes.

19 Q And I just want to make sure I'm clear.

20 No one at Census has reviewed the actual surveys,
21 correct?

22 A Not that I know of.

1 Q Did you participate in any calls with
2 anyone from Nielsen regarding the citizenship
3 question?

401/403

4 A No.

5 Q Do you know if anyone at Census did?

6 A No.

7 Q Have you seen the underlying data from
8 these Nielsen surveys?

9 A I have not.

10 Q Do you know if anyone at Census has?

11 A I don't.

12 Q I will take that back.

13 MS. GOLDSTEIN: I'm about to move on to
14 another topic. So I don't know if you want to
15 take a break for lunch or keep going.

16 MS. BAILEY: Do you know how lengthy that
17 topic's going to be?

18 MS. GOLDSTEIN: It's going to be a little
19 bit long.

20 MS. BAILEY: Do you have a preference?
21 We're at three hours now.

22 How do you feel?

1 THE WITNESS: Just keep going.

2 MS. BAILEY: Okay.

3 BY MS. GOLDSTEIN:

4 Q Is there any reason why the procedures
5 for adding questions to the decennial would be
6 less rigorous than the process of adding questions
7 to the ACS? 401/403

8 MS. BAILEY: Objection.

9 THE WITNESS: No.

10 BY MS. GOLDSTEIN:

11 Q No reason why adding changes to the short
12 form would require less testing than changes to
13 the ACS, correct?

14 A Not for an untested question, so, no.

15 Q There's no reason why adding changes to
16 the short form would require less testing than
17 changes to the ACS?

18 A No.

19 Q I'm going to hand you back what I had
20 previously marked as Exhibit 16 to this
21 deposition.

22 And let's go back to Question 31, which

1 is over on 9832. And we had talked before about
2 the cognitive and field testing the question --
3 the proposed questions typically undergo, correct?

4 A Right.

5 Q What testing was done for the proposed
6 changes to the race and ethnicity question?

7 A So those were part of the

8 National Content Test --

401/403

9 Q What is that?

10 A -- mid decade.

11 It's a survey that tried different
12 versions of the race and ethnicity questions to
13 see how people would answer them.

14 Q And what's the purpose of that?

15 A To understand the data quality for
16 different versions of the question.

17 Q And I know that one thing that goes into
18 data quality is the number of people responding.

19 A Yep.

20 Q Anything else that goes into data quality
21 in that context?

22 A How -- how, you know, sort of easily,

1 people sort of respond to the questions and
2 the -- in the case of the race and ethnicity,
3 the -- you know, the number of people that are
4 sort of classified as -- you know, that don't have
5 a precise race and ethnicity category.

6 Q How can you tell?

7 A So, you know, the current method
8 classifies lots of people as -- as -- you know,
9 there are -- there's kind of a catchall category.
10 I'm not the expert on this. 401/403

11 Q Who is?

12 A I would call Karen Battle. So I know
13 that we were looking for ways to have more precise
14 data, so.

15 Q What other kinds of testing was done for
16 the purposed changes to the race and ethnicity
17 question?

18 A I believe that's the primary testing that
19 was done. I mean, there was a part of the 2020
20 census, the alternative questionnaire experiment;
21 that was an early version of that.

22 Q And what is that?

1 A That was another -- you know, that was
2 part of the census that was sent to a small number
3 of housing units as a test.

4 Q And what was it testing?

5 A Alternative forms of questions that were
6 already on the census, like race and ethnicity.

7 Q And more than just race and ethnicity?

8 A I think it was just race and ethnicity.

9 Q And what's the goal of testing those
10 alternative forms?

401/403

11 A To get more precise data.

12 Q And to determine the quality of the
13 question?

14 A Yeah.

15 Q And the quality of the data received?

16 A Yeah. Yeah.

17 Q And when a new question is added to the
18 census, what kind of cognitive testing is done?

19 A So -- so -- with a completely new
20 question, there could be both some small scale
21 tests done in a lab setting and then some sort
22 of, you know, test questionnaire that would be

1 sent out.

2 Q What are these small scale tests that are
3 done in a lab?

4 A Where you're actually administering the
5 survey and getting immediate feedback from --
6 like, people having difficulty understanding the
7 question.

401/403

8 Q Why is that important?

9 A Just to understand what are the reasons
10 that people don't -- can't answer the question
11 correctly.

12 Q Any other reasons why that's important?

13 A No. That's -- to understand that when we
14 ask a question, people understand it and are
15 giving us an answer that meets the objective.

16 Q Sure. And you mention test
17 questionnaires as a kind of cognitive research?

18 A Yeah.

19 Q Can you tell me what that entails?

20 A So the -- just -- so the -- then you'd
21 send it out into the field and see if you get good
22 responses. So there's a difference between

1 sitting in a lab and asking some more questions
2 and somebody actually filling it out when they
3 have it in their house.

4 Q Other kinds of testing to new or changed
5 questions, other than the Content Test, the
6 cognitive testing, and you discussed before the
7 end to end.

8 A Yeah.

401/403

9 Q Anything else?

10 A That's about it.

11 Q So earlier, you testified that the
12 end-to-end testing tests systems, correct?

13 A Correct.

14 Q What systems do you refer to?

15 A The systems with which we use to conduct
16 the census.

17 Q What are those?

18 A So data capture, so the -- you know,
19 electronic, you know, survey instrument.

20 Q Uh-huh.

21 A The paper data capture systems, all the
22 mailing, all the receipt of mail, the electronic

1 systems, the telephone questionnaire assistance
2 center, the iPhones that enumerators use out in
3 the field, all of that.

4 Q Uh-huh. Does the Census Bureau test
5 how -- the order of questions?

401/403

6 A Yes.

7 Q Where? What? Which of these tests?

8 A So like the National Content Test might
9 be a place -- I don't think they did -- I don't
10 think they did in that particular instance, so.

11 Q Does the end-to-end test test the order
12 of questions?

13 A No. The end-to-end test doesn't have any
14 test about the questions, at all.

15 Q There's no response rates for the
16 end-to-end test?

17 A We track the response rates, but we're
18 not -- it's not a life measurement exercise. It's
19 really more of a testing systems exercise. So
20 tracking response rates while we're live in the
21 field is something we do in 2020, so we do that
22 during the end-to-end test, as well. For

1 operational reasons, not for --

2 Q So if --

3 A -- not for quality assessment reasons.

4 Q If the citizenship question had been on
5 the 2018 end-to-end test, would that provide data
6 as to the response rates for the citizenship
7 question?

8 MS. BAILEY: Objection. Calls for
9 speculation. 401/403

10 THE WITNESS: We would have had
11 some -- we could have gained some insight into the
12 item nonresponse rates for that question.

13 BY MS. GOLDSTEIN:

14 Q And would you have also gained insight
15 into effects on total response rate if this
16 citizenship question was on the test questionnaire
17 for the 2018 end-to-end test?

18 MS. BAILEY: Objection. Calls for
19 speculation.

20 THE WITNESS: That would have to have
21 been a test objective, and we would have to set up
22 an experiment to do that.

1 BY MS. GOLDSTEIN:

2 Q How would you -- how could you do that?

3 MS. BAILEY: Objection. Calls for
4 speculation.

5 BY MS. GOLDSTEIN:

6 Q How could you set up a test objective
7 that would test response rates with the inclusion
8 of a citizenship question?

9 MS. BAILEY: Same objection.

10 THE WITNESS: Some sort of randomized
11 experiment.

12 BY MS. GOLDSTEIN:

401/403

13 Q What would that be?

14 A I can't tell you exactly what that would
15 be. We'd have to have some methodologist work on
16 that.

17 Q But that's the kind of thing the
18 Census Bureau is equipped to do?

19 A Yes.

20 Q And it did not happen with the
21 citizenship question, correct?

22 A No.

1 Q Why is it -- is it important to see how a
2 question -- withdrawn.

3 The content testing that was performed,
4 were all of the questions that are on the planned
5 short form, other than the citizenship question,
6 included in the content testing?

7 MS. BAILEY: Objection. Form.

8 THE WITNESS: I don't know, actually.

9 BY MS. GOLDSTEIN:

10 Q Who would know?

11 A Karen Battle.

12 Q Did the questionnaire that was used for
13 the end-to-end testing include all questions on
14 the short form except for the citizenship
15 question? 401/403

16 A Yes.

17 Q Does the Census Bureau do focus group
18 testing?

19 A So, for cognitive testing?

20 Q Is that the same thing?

21 A No.

22 Q Okay.

1 Q Can the political climate impact the
2 sensitivity of a question?

3 MS. BAILEY: Objection. Calls for
4 speculation. 401/403

5 THE WITNESS: Potentially.

6 BY MS. GOLDSTEIN:

7 Q Can you think of other things that might
8 impact the sensitivity of a question?

9 MS. BAILEY: Objection. Calls for
10 speculation.

11 THE WITNESS: Not off the top of my head,
12 no.

13 BY MS. GOLDSTEIN:

14 Q Can the order of questions impact results
15 to a survey? 401/403

16 A You know, I understand from the
17 literature that it can. I'm not -- you know, I'm
18 not an expert on that, but, you know, I think
19 especially in a large survey, I think it can.

20 Q Is that something that the Census Bureau
21 tests for the decennial?

22 A So for the decennial, the short form, I

PL obj (194:20 to 195:17), FRE 701 to 705

1 think, it's less of a concern than it is for
2 something large, like the ACS, where you have
3 different topic modules and stuff like that.

4 Q Why do you say that?

5 A So -- because I think that's when
6 question order matters, is in a large complex
7 survey. There's various framing issues and stuff
8 like that for people.

9 Q Are you aware of any studies that say
10 that question order does not matter for a shorter
11 survey?

12 A So I know that people are more concerned
13 about it on a longer survey. I've never seen
14 anyone argue the counter -- you know, the other
15 way, saying that it doesn't -- I've never seen
16 anyone say it doesn't matter. I just see that it
17 matters more for a large complex survey.

18 Q But it matters some for a short survey?

19 A Yeah, again, I'm not a survey
20 methodologist, especially a household survey
21 methodologist, so I can't speak expertly towards
22 that.

1 that sort of stuff, you know, it all matters, so.

2 Q Is there a -- we talked a few minutes ago
3 about the political climate might impact the
4 sensitivity of a question?

5 A Uh-huh. Yes.

6 Q Can political climate impact how a
7 question functions?

8 MS. BAILEY: Objection. Calls for
9 speculation.

10 THE WITNESS: I don't know what you mean
11 by how a question functions.

12 BY MS. GOLDSTEIN:

13 Q Fair enough.

14 Can the political climate impact response
15 rates?

16 MS. BAILEY: Objection. Calls for
17 speculation.

401/403

18 THE WITNESS: So, you know, if, you know,
19 one of the factors in response rates is distrust
20 in government generally, if the political climate
21 increases or decreases that, it could have an
22 impact on response rates.

1 THE WITNESS: Take this one back, too?

2 MS. GOLDSTEIN: Can you mark this for me,
3 please?

4 (Plaintiffs' Exhibit 19, Email, was
5 marked.)

6 BY MS. GOLDSTEIN:

7 Q I'm showing you what's been marked as
8 Plaintiffs' Exhibit 19. It is Bates stamped 2292
9 and 2293. It is an email from Earl Comstock dated
10 2/2/18. 401/403

11 Do you recognize this document?

12 A You know, not per se, but this
13 is -- looks like a transmission of the answers
14 from Burton to Earl.

15 Q And does that comport with your
16 recollection as to how those 35 questions and
17 answers were sent over to Commerce?

18 A Yeah. There was drips and drabs.

19 Q And the subject of this is citizenship
20 question complete set?

21 A Yeah.

22 Q So it is your understanding that on

1 February 2, 2018 the complete set of those 35
2 questions were sent to Commerce, correct?

3 A If that's what that means, yeah.

4 Q Let me give you the attachment to this
5 email.

6 (Plaintiffs' Exhibit 20, Questions on the
7 Jan 19 draft Census Memo on the DOJ Citizenship
8 Question Reinstatement Request attachment, was
9 marked.) 401/403

10 BY MS. GOLDSTEIN:

11 Q I'm showing you what's been marked as
12 Plaintiffs' Exhibit 20 -- I'm sorry.

13 MS. BAILEY: Thank you.

14 BY MS. GOLDSTEIN:

15 Q It is 2294 --

16 A Right.

17 Q -- to 2305. It is another copy of the 35
18 questions that we had just reviewed on Exhibit 16,
19 correct?

20 A Okay.

21 Q Yes?

22 A Yes.

1 Q And this is, as I understand it, the
2 attachment to Exhibit 19.

3 A Okay.

4 Q So would this be the final version that
5 is sent over to Commerce?

6 A I'm not sure that's the final version,
7 but it's probably pretty close.

8 Q Do you recall any changes that were made
9 after this?

10 A I -- after February 2nd, I -- you know, I
11 can't tell you whether there were or not.

12 Q From Census? 401/403

13 A Yeah.

14 Q Do you recall asking for any changes
15 after December 2nd to the 35 questions?

16 A No.

17 Q If someone had made changes, from Census,
18 to these questions, would you have seen it?

19 A Probably. But I'm just saying I
20 don't -- I don't recall whether this was the last
21 version or not, so.

22 Q If you go to Question 31 --

1 A Okay.

2 Q -- it begins on 2303 to 2304, this is the
3 same language that we saw on Exhibit 16, correct?

4 A I think so.

5 Q And, to your knowledge, is this -- this
6 is the well-established process, correct?

7 A Yes, a summary of it.

8 Q And this Question 31 on 2303 and 2304,
9 this is the language that the Census Bureau
10 believes describes that well-established process,
11 correct?

401/403

12 MS. BAILEY: Objection. Form.

13 THE WITNESS: Yes.

14 BY MS. GOLDSTEIN:

15 Q The Census Bureau wrote the language in
16 31?

17 A Yes.

18 Q To your knowledge, did Census ever change
19 the language in Question 31?

20 A Again, I don't know. I don't know for
21 sure that this is the last version we sent.

22 Q Do you recall anyone at Census proposing

1 any changes to the language in Question 31?

2 A No. I mean, but, obviously, we're still
3 editing responses here, so that -- that could
4 happen. It's a relatively longer answer than most
5 of the other ones, so.

6 Q But you do not recall anyone at Census
7 changing the language of Question 31 following
8 this language, correct?

9 A No. I don't recall, one way or the
10 other.

401/403

11 Q And is there anything that would help
12 your recollection?

13 A I mean, again, if this is not the last
14 version, the last version would answer that
15 question.

16 Q Well, this one was in -- okay.
17 So who is Mr. Reist?

18 A He works for Al.

19 Q Who is Al?

20 A Al Fontenot.

21 Q And what is Al Fontenot's job?

22 A He's the head of decennial.

1 Q And what is Mr. Reist's job?

2 A So he's the head of their budget and
3 communications area.

4 Q And Mr. Reist sends this, to among
5 others, Earl Comstock, correct?

6 A Uh-huh.

7 Q I'm sorry. I need a yes or no.

8 A Yes.

9 Q And you were cc'd on this?

10 A Yes.

11 Q And had you reviewed these responses
12 before Mr. Reist sent them to Mr. Comstock?

13 A You know, I probably perused them. I
14 certainly didn't proof them or anything like that.

15 Q But as we had talked about before, these
16 responses, these 1 to 35 questions were, in your
17 view, accurate, correct?

401/403

18 A Yes.

19 Q Because you wouldn't --

20 So -- and that includes Question 31,
21 correct?

22 A Yes.

1 Q I'll take that back.

2 I'm going to show you what had been
3 previously marked as Exhibit 16 to the Abowd
4 deposition. If you bear with me for just a
5 moment.

6 It is another version of those 35
7 questions, this time that were received in the
8 original administrative record. It is Bates
9 stamped 1286 to 1297. And if we could go back
10 over to Question 31, it is on 1296. 401/403

11 The answer to Question 31 in this version
12 says, "Because no new questions had been added to
13 the decennial census for nearly 20 years, the
14 Census Bureau did not feel bound -- bound by past
15 precedent when considering the
16 Department of Justice's request. Rather, the
17 Census Bureau is working with all relevant
18 stakeholders to make ensure that the legal and
19 regulatory requirements are filled and that
20 questions will produce quality and useful
21 information for the nation. As you're aware, that
22 process is ongoing at your direction."

1 That's pretty different than the language
2 of Question 31 we've seen before, right?

3 A Yes.

4 Q It does not describe the well-established
5 process we've been discussing, correct?

6 A It does not.

401/403

7 Q It does not talk about the
8 well-established process, at all, correct?

9 A Correct.

10 Q It doesn't --

11 A Well, it sort of summarizes.

12 Q Where?

13 A To work with all relevant stakeholders to
14 ensure the legal and regulatory requirements are
15 filled and questions will produce quality
16 information, so --

17 Q Does this --

18 A -- that's what the process is meant to
19 do.

20 Q Does this answer to Question 31 discuss
21 the process by which agencies evaluate their data
22 needs?

1 A No.

2 Q And does it say that in order to be
3 included, proposals must demonstrate a clear
4 statutory and regulatory need for data?

5 A It does say legal and regulatory
6 requirements are filled.

7 Q Does it mention testing, at all?

8 A No.

9 Q Does it mention public comment?

401/403

10 A No.

11 Q Does it mention --

12 A No -- I don't -- it says all relevant
13 stakeholders. That includes public comment.

14 Q Okay. Does it mention OMB specifically?

15 A It says relevant stakeholders, so, you
16 know --

17 Q Does it mention OMB specifically?

18 A No. It does not.

19 Q Okay. Do you know who wrote the language
20 in Number 31?

21 A I do not.

22 Q When was the first time you saw the